

REMARKS

Claims in the case are 3, 4, 8-12 and 14-18 upon entry of this amendment. Claims 3, 4, 8-12, 14 and 15 have been amended, Claims 16, 17 and 18 have been added, and Claims 1, 2, 5-7 and 13 have been cancelled herein.

Basis for amendment of (A) of Claim 10 is found at page 8, lines 22-25 of the specification. Basis for the inclusion of the average particle size in B.2 of Claim 10 is found at page 11, line 6 of the specification. Basis for the inclusion of gel content in B.2 of Claim 10 is found a page 12, lines 15-16 of the specification. Basis for N of formula (I) being from 0.9 to 2.5 in Claim 10 is found at page 18, line 20 of the specification.

Basis of added Claim 16 is found at page 3, line 24. Basis for added Claims 17 and 18 is found at page 7, lines 4-9 and at page 8, line 25 of the specification.

Claims 13 and 14 stand rejected under 35 U.S.C. §112, second paragraph. This rejection is respectfully traversed with regard to the amendments herein and the following comments.

Claim 13 has been cancelled herein. Claim 14 has been amended to include positive steps. Basis for the amendment to Claim 14 is found at page 21, lines 28-30 of the specification.

In light of the amendments herein and the preceding remarks, Applicants' claims are deemed to particularly point out and distinctly claim the subject matter which they regard as their invention. Reconsideration and withdrawal of this rejection is respectfully requested.

Claim 14 stands rejected under 35 U.S.C. §101. This rejection is respectfully traversed in light of the amendments herein and the following remarks.

Claim 14 has been amended to include positive steps. Basis for the amendment to Claim 14 is found at page 21, lines 28-30 of the specification.

As amended, Claim 14 is deemed to be in proper process form for purposes of meeting the requirements of 35 U.S.C. §101. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 1-15 stand rejected under 35 U.S.C. §102(a) as being anticipated by:
DE 197 34 661 (US 6,569,930, **Eckel et al '930**);
DE 197 21 628 (US2002/0072553 A1, **Eckel et al '553**);
DE 198 01 050 (US 6,326,423 B1, **Eckel et al '423**);
DE 198 56 484 (US 6,414,107 B1, **Zobel et al**);
DE 197 34 667 (US 6,441,068 B1, **Eckel et al '068**);
EP 0 747 424 (**Bhatia et al**);
WO 96/27600 (US 6,083,428, **Ueda et al**); or
EP 0 755 977 (**Liu**). This rejection is respectfully traversed in light of the amendments herein and the following remarks.

Eckel et al '930 discloses a flame resistant thermoplastic molding composition that includes finely divided inorganic powder as an essential component. See the abstract and column 2, line 26 through column 3, line 10 of Eckel et al '930.

Eckel et al '930 does not disclose Applicants' presently claimed composition which is free of finely divided inorganic powder. Applicants' present claims have closed-end transitional language.

Eckel et al '553 discloses a flame resistant thermoplastic molding composition that includes a monophosphorous compound as a necessary component. Eckel et al '553 does not disclose the composition of Applicants' claims, which does not contain monophosphorous compounds. Applicants' present claims have closed-end transitional language.

Eckel et al '423 discloses a polycarbonate-ABS molding composition which contains metal salts of mono-phosphorous compounds (abstract; and column 1, line 50 through column 2, line 25). Eckel et al '423 do not disclose the composition of Applicants' claims, which does not contain metal salts of mono-phosphorous compounds. Applicants' present claims have closed-end transitional language.

Zobel et al disclose thermoplastic polycarbonate molding compositions that include silicon compounds having an average diameter of 0.001 to 20 μm (abstract). Zobel et al do not disclose the composition of Applicants' claims, which does not contain silicon compounds. Applicants' present claims have closed-end transitional

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Claims 1-15 stand rejected under 35 U.S.C. §102(b) as being anticipated by:
US 5,204,394 (**Gosens et al**);
US 5,672,645 (**Eckel et al '645**);
US 5,750,602 (**Köhler et al**); or
US 5,864,004 (**Kim et al**). This rejection is respectfully traversed in light of the amendments herein and the following remarks.

The Office Action incorrectly recites the rejected claims as being "1-18" at page 4, paragraph 9. Prior to the present rejection, claims in the case were 1-15. Upon entry of this amendment, claims in the case are 3, 4, 8-12 and 14-18.

Gosens et al disclose a polymer mixture that includes a styrene-containing graft copolymer (abstract; column 4, lines 1-29; and column 6). Gosens et al do not disclose the composition of Applicants' claims, which includes a graft copolymer having a grafting backbone having an average particle size of 0.10 to 0.6 μm , and a gel content of at least 40 percent by weight.

Eckel et al '645 disclose a flame resistant thermoplastic molding composition that includes a monophosphorous compound. Eckel et al '645 do not disclose the molding composition of Applicants' claims, which does not contain a monophosphorous compound. Applicants' claims have been amended to include closed-end transitional language.

Köhler et al disclose flameproofed polycarbonate/ABS blends, which include polycarbonates that are at least partially modified with halobutyl rubber blocks. (abstract; and column 5, line 30 through column 6, line 19). Köhler et al do not disclose the composition of Applicants' claims, which includes a graft copolymer in which the grafting backbone has a gel content of at least 40 percent by weight. In addition Köhler et al do not disclose the composition of Applicants' claims, in which the aromatic polycarbonate is selected from the group consisting of bisphenol A homopolycarbonates and/or copolycarbonates of bisphenol A and up to 15 mol% of at least one other diphenol (i.e., an aromatic polycarbonate that is not modified with halobutyl rubber blocks).

Kim et al disclose a flame retardant resin composition that includes a blend of polycarbonate and ABS graft copolymer (abstract). Kim et al do not disclose the composition of Applicants' claims, which includes a graft copolymer in which the grafting backbone has an average particle size of 0.10 to 0.6 and a gel content of at least 40 percent by weight.

In light of the amendments herein and the preceding remarks, Applicants' claims are deemed to be unanticipated by and patentable over Gosens et al, Eckel et al '645, Köhler et al, or Kim et al. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 1-15 stand rejected under 35 U.S.C. §102(e) as being anticipated by US 5,994,463 (Eckel et al '463). This rejection is respectfully traversed in light of the amendments herein and the following remarks.

The Office Action incorrectly recites the rejected claims as being "1-18" at page 4, paragraph 12. Prior to the present rejection, claims in the case were 1-15. Upon entry of this amendment, claims in the case are 3, 4, 8-12 and 14-18.

Eckel et al '463 disclose a thermoplastic polycarbonate / graft polymer molding composition (abstract; and column 4, lines 60-63). Eckel et al '463 do not disclose the composition of Applicants' claims, which includes a graft copolymer in which the grafting backbone has an average particle size of 0.10 to 0.6 and a gel content of at least 40 percent by weight.

In light of the amendments herein and the preceding remarks, Applicants' claims are deemed to be unanticipated by and patentable over Eckel et al '463. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 1-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable "over the references in paragraphs #7, #10 and #13." This rejection is respectfully traversed in light of the amendments herein and the following remarks.

The Office Action incorrectly recites the rejected claims as being "1-18" at page 5, paragraph 16. Prior to the present rejection, claims in the case were 1-15. Upon entry of this amendment, claims in the case are 3, 4, 8-12 and 14-18.

It appears that the present rejection is based on the following references: Eckel et al '930; Eckel et al '553; Eckel et al '423; Zobel et al; Eckel et al '068; Bhatia et al; Ueda et al; Liu; Gosens et al; Eckel et al '645; Köhler et al; Kim et al; and Eckel et al '463. As it is not stated in the rejection whether any one reference or combination of references is taken in view of any other reference or combination of references, it would appear that the present rejection is based on all of the cited references taken together.

None of the cited references, either alone or in combination, disclose, teach or suggest the composition of Applicants' claims, which: (i) includes only components A through F; (ii) a graft copolymer having a grafting backbone which has an average particle size of 0.10 to 0.6 and a gel content of at least 40 percent by weight; and (iii) a phosphorous compound represented by formula-I in which (N) is 0.9 to 2.5. In addition, none of the references suggests the improved physical properties that are obtained with the compositions of Applicants' present claims (e.g., in part with regard to the N-value range of 0.9 to 2.5 for the phosphorous compound represented by formula-I). Attention is directed to the examples of Applicants' specification, in which compositions according to the invention (i.e., examples 3, 4, 5 and 6) have improved softening points, tensile strengths and weld-line strengths relative to comparative composition (i.e., examples 1 and 2).

The references lack the requisite disclosure that would motivate a skilled artisan to combine or otherwise modify them, in the manner suggested by the Office Action, to arrive at Applicants' presently claimed compositions. For example, Eckel et al '423 discloses the necessary presence of phosphorous metal salts in their compositions. None of the other references disclose or suggest the presence of phosphorous metal salts in their compositions. Bhatia et al disclose the necessary presence in their compositions of a mixture of high and low molecular weight phosphorous compounds. None of the other references disclose or suggest the presence of a mixture of high and low molecular weight phosphorous compounds in their compositions. Liu discloses the necessary presence of monovinylidene aromatic compounds in his composition. None of the other references disclose the


presence of monovinylidene aromatic compounds in their compositions. Köhler et al disclose the necessary presence of a polycarbonate modified with halobutyl rubber blocks in their composition. None of the other references disclose or suggest the presence of a polycarbonate modified with halobutyl rubber blocks in their compositions. "[T]he examiner bears the initial burden of presenting a *prima facie* case of obviousness. Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicants." *In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993).

In light of the disparity between the various references, the rejection appears to impermissibly use Applicant's application as a blueprint for selecting and combining or modifying the cited references to arrive at Applicants' claimed invention, thereby making use of prohibited hindsight in the selection and application of that prior art. The use of hindsight reconstruction of an invention is an inappropriate process by which to determine patentability. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988). Modifying "prior art references without evidence of such a suggestion, teaching or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability -- the essence of hindsight." *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999) (citations omitted).

In light of the amendments herein and the preceding remarks, Applicants' claims are deemed to be unobvious and patentable over Eckel et al '930; Eckel et al '553; Eckel et al '423; Zobel et al; Eckel et al '068; Bhatia et al; Ueda et al; Liu; Gosens et al; Eckel et al '645; Köhler et al; Kim et al; and Eckel et al '463. Reconsideration and withdrawal of this rejection is respectfully requested.

In light of the amendments herein and the preceding remarks, Applicants' presently pending claims are deemed to meet all the requirements of 35 U.S.C. §§ 101 and 112, and to define an invention that is unanticipated, unobvious and hence, patentable. Reconsideration of the rejections and allowance of all of the presently pending claims is respectfully requested.

Respectfully submitted,

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